

WILLIAM B. IRVAN

V

RICK THALER

UNITED STATES COURT OF APPEALS
SOUTHERN DISTRICT OF TEXAS
FILED

JUN 05 2013

HONABLE JUDGE LYNN N. HUGHES

JUNE 3, 2013

David J. Bradley, Clerk of Court

PRO SE MOTION ASKING THIS HONABLE COURT IF PETITIONER SHOULD HAVE PROCEEDED TO FEDERAL COURT DUE TO HIS ART.64.DNA MOTION FILED IN STATE COURT,IN 2005.ALSO,HUTSON V.QUARTERMAN,EXPARTE POWERS,EXPARTE MCNEIL,EXPARTE GREEN & EXPARTE SOFFAR .ALSO ASKING THIS COURT TO ALLOW PETITINOR TO PROCEED BACK TO STATE COURT TO RESOLVE HIS ART 64.MOTION AND AT THE SAME TIME ASK THE TCCA TO ALLOW PETITIONER TO FILE A SUPPLEMENTAL 11:071 WRIT ON THE ISSUES THAT PETITIONER ASK AND TRYED TO GET HIS HABEAS ATTORNEYS TO FILE ON ,BUT WAS UNABLE TO GET THEM TO DO, AND WAS ABANDON BY HABEAS ATTORNEY (SEE DOCKET # 13.) ALSO SEE 28 U.S.C.S 2244 (d)(1) and 2244 (d)(2)

Your Honor,I am in no way trying to disrespect this Honable court or You Your Honor.I am not trying to act like I know what I am doing or that I am some kind of an attorney,Because I AM NOT. But I can read and I do under stand the Law when it comes to my case.

Your Honor made a order that said"Petitioner will file ALL Motions through his Attorney's"@ 25 Petitioner wrote a letter to the court asking for new attorney's or bring him back for a Fretta Hearing and appoint him Pro Se.Then @ 29 Petitioner Dismissed his Attorney's. With all due respect Your Honor,I have to file my motion Pro Se, Since I no longer am represented by counsel.

Said Petitioner filed a Pro Se DNA Motion Under Art 64.of the TCCP. **Art 64.05** States " An Appeal under this section is to a court of Appeals in the same manner as an appeal of any other crimmlinal matter, except that if the convicted person was convicted in a CAPITAL CASE AND WAS SENTANCED TO DEATH,THE APPEAL IS A **DIRECT APPEAL TO THE COURT OF CRIMMINAL APPEALS.**

Hutson V.Quartermann 508 F.3d 236 States,"Petitioner a state inmate, appealed from an order of the United States District Court from the Southern District of Texas ,that dissmised his petition for Habeas relief as time-barred under the one-year limitations period of 28 U.S.C.S 2244(d)(1).The inmate argued that the limitations period should be tolled for the period of his Tex Crim.Proc.Code Ann.64.01 motion for DNA testing was pending in state court.A inmate's post-conviction motion for DNA Testing pursuant to Tex Crim Proc. Code Ann art.64.01 **constituted a request for review of the judgment pursuant to which he was incarcerated,and was therefore a motion for other collateral relief that tolled the one-year limitations period of 28 U.S.C.S 2244 (d)(1).**

In the Overview it states"The inmate argued that the state court had not ruled on his motion for DNA Testing in a timely manner,and he was entiitled to equitable tolling relief.The Court of Appeals agreed.It found that that the DNA Test qualified as "OTHER COLLATERAL REVIEW" and thus tolled the limitations period for an additional year.

Page 6 states Additionally the Supreme Court has held that "[the] AEDPA's tolling rule is designed to protect the principles of 'comity, finality, and federalism, by promoting the exhaustion of state remedies while respecting the interest of finality of state court judgments.'" 18 other circuits have held that federal courts should give state courts the opportunity to review a claim and provide any necessary relief **BEFORE THE FEDERAL COURTS PROCEED BECAUSE SUCH RESTRAINT ON THE PART OF FEDERAL COURTS REINFORCES COMITY AND MAY OBVIATE FEDERAL REVIEW.** 19. If the Federal Courts deny tolling the AEDPA's limitations, petitioner might forgo state-law remedies to retain their right to federal review. 20 This court agrees with these principles, and notes that **the comity argument especially resonates in this case.** Texas has enacted a right to DNA reexamination; the state has decided to impose a potential disruption to the finality of its own case, in order to protect the wrongly accused. Comity therefore dictates that THE FEDERAL COURTS GIVE TEXAS COURTS TIME TO REVIEW (508 F.3d 240) these DNA claims and provide necessary relief without forcing convicted persons to choose between the two systems thereby undermining the remedy the Texas Legislature has provided.

Before James M. Leitner filed my 11:071 Habeas Writ, He hired a DNA Expert and they went to 601 Lockwood and the Harris County District Clerk's Vault and viewed all of the Evidence. Then Mr. Leitner filed with the 180th District Court a Motion to Compel the State to let Petitioner test some of the DNA. (See Motion to Compel @ Document 6-10 in Petitioner's writ.) The Judge denied the Motion. Then on December 5, 2005, Petitioner filed a Motion Pro Se to test all of the DNA found in this case. I have done everything humanly possible to get the 180th District Court to test this DNA. They left me without an attorney and then gave me an attorney that thought my DNA was at HPD and it has NEVER been at HPD. Then I allowed Patrick F. McCann to take over my Art 64, and he has made every excuse he can find and then told me and my Mom that Casie Gotro was now my DNA Attorney. As of 5/24/13 10:46 AM Per the Harris County District Clerk's Public records, McCann is my attorney. OR WAS. I discharged him from this case also. McCann did tell me in his November 14, 2012 letter that ADA Lynn Hardaway had agreed to let us test the Hair from her Finger Nail's. Petitioner has in no way tried to stall this case. In fact the State of Texas has stalled this case. I have been trying to test the DNA for **(7) SEVEN YEARS.** Then the state tries to push me in to Federal court and say I am time-barred. They are the one's with the DNA. So, TEST IT. I CAN NOT.

Per *Ex parte Powers* 487 SW 2d 101, *Ex parte McNeil* 588 SW 2d 529, *Ex parte Green* 548 SW 2d 914 and *Ex parte Soffar* 143 SW 3d 804. A petitioner can not have a case in Federal court and in state court at the same time. It is also clear in *Hutson v. Quarterman* and, U.S.C.S 2244 states that I should resolve my Art 64, before proceeding to Federal Review. That is why I am asking this honorable court to make an order, if it feels this is right. To stop my Federal appeal pursuant to Art 64, and U.S.C.S 2244(d)(1) and (d)(2) & allow me to resolve my Art 64, and ask the TCCA to allow me to file a supplemental 11:071 Writ and resolve the issues that I asked my Habeas attorneys to file on (ie IAC ON DIRECT APPEAL ATTORNEY, ACTUAL INNOCENCE, MARTINEZ, BRADY ISSUES AND PROSECUTOR

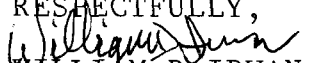
Misconduct, along with all that I asked my attorneys HABEAS TO DO IN MY 11:071 Habes Writ) (SEE DOCKET 13 for some of the issues.)

I am in no way asking this Honable Court to Dismiss what has been filed. Petitioner does not know if that would be the case, since from what Hutson V. Quarterman and 2244(d)(1) states. I should not proceed to federal review UNTIL I resolve the Art 64, but it seem from reading said statements that I have not started my AEDPA one-year, and am not allowed to file anything in Federal Court. You, YOUR HONOR are the Expert on that. It seem's like my so called attorney's would of knownen this. That is one of the reason's that Patrick F. McCann and Casie Gotro are no longer my attorney's.. **They should not represent ANYONE IN FEDERAL COURT. They have too many cases and do not have a grasp of Federal Law. If they did I would not have to write this motion.** I did not know this Your Honor, that you had made an order TWICE telling my attorney this same thing and they either did not under stand it or chose to look the other way. On the 4:11-mc-00293 Docket 30 You ORDERED, William Irvan is a Texas death row inmate .He filed a motion for an administrative stay so that he can seek testing to DNA evidence in state court. You say, No stay is appropriate in this case.....Then you say. Thaler points out that Irvan has not yet filed a federal habeas corpus petition ,and is already seeking DNA testing in state court. This court can not stay the federal statute of limitations, **BUT THE STATUE OF LIMITATIONS IS ALLREADY TOLLED BY IRVANS STATE COURT PROCEEDINGS. THEREFORE THERE IS NO BASIS FOR STAYING THIS CASE, ACCORDINGLY.** Then at 48 You stated, Respondent states that ,Because Irvan is currently litigating a challeng to DNA evidence in state court, the limitations period is NOT RUNNING. Your Honor you would think at that point my attorney's would of said what I have written in this letter. Hutson V. Quarterman and 2244(d)(1). I should not be in federal court. I know that they state is going to push me in to Federal court, but you would think my attorney's would look out for my best intrest. I guess that is why I was never provided anything filed in my case. The less I know, the more they can over look and I lose.

Your Honor, if you are not going to provide me with counsel, could you please dismiss McCann and Gotro and put it on the docket that I am Pro Se. So, I can get some help myself. An attorney will not help me if I am still listed as having attorney's. I would like for the court to know that I have written the Innocence Project NY, NINA MORRISON and asked her to represent me in my DNA Issue.

THANK YOU YOUR HONOR FOR YOUR PATIENCE WITH ME. I DID NOT KILL ANY ONE AND I AM JUST TRYING TO PROVE MY INNOCENCE.

PETITIONER PRAYS THAT THIS HONABLE COURT WILL GRANT THIS MOTION. IF NOT, ALLOW PETITIONER TO AMEND THE PETITION.

RESPECTFULLY,

WILLIAM D. IRVAN.

1 enclosure, 3 page letter to the 180th Dist Court. RE: DNA Testing. On last page is a note to Judge Hughes. The amount of time to appoint me a DNA Attorney.

RE: ATTORNEY AND DNA

Your Honor:

On December 5, 2005, I filed a Pro Se DNA Motion in your courtroom. Not long after that my Direct Appeal Attorney contacted me. She stated that You had Appointed Her as my DNA Attorney. I then wrote You a letter stating that I could not accept her because, I had just filed a "IAC CLAIM" on Her in my 1107.1 WRIT, in your court room. She then WITHDREW. I have been left with out a DNA Attorney since "MARCH 7, 2006."

I dont think that you would make me Pro Se and not tell me anything BUT, It has been (20) Months since She WITHDREW and no one has made any contact with Me. I asked Jim Leitner and He said that I did NOT have a DNA Attorney, that He knew about.

About a year ago I filed (3) Motions in your courtroom. 1) was for Standby counsel. 2) Was for funds for a DNA Expert. 3) was for the Autopsy. I did this because, I dont know what else to do.

On September 1, 2007 House Bill 681 went in to Law. It states that: "In a case in which a convicted person has requested forensic DNA testing, House Bill 681 has established a deadline for the appointment of counsel for an indigent or presumable indigent offender and for a response from the prosecutor to the request for forensic DNA Testing. The Bill broadens circumstances under which the court may order that forensic DNA testing be conducted in a laboratory to include at the request of the convicted person, regardless of whether the other parties agree, and requires the state to pay for such testing if good cause is shown."

If you read the DNA Motion and the Supplemented DNA Motion, You will see that there is Proof that I was haveing a Relationship With Michelle Shadbolt, before She was Murderd and Her Husband KNEW. My Trial attorneys had a chance to show this at my trial but, did NOTING. (SEE 1107:1 WRIT) filed in the 180 th District Court on October 10, 2005. Your courtroom. You will see the Notes of Wayne Hill my 1st Attorney. I told Him "WHO" He could contact to PROVE that She and I were haveing a relationship. On the 1st Day I met Him. After Wayne Hill was TAKEN from Me as My Attorney and before I went to Trial, I was Appointed Attorney Mack Arnold. At this time I had a P.I. named SCOTT BELLSHAW. I gave Him ALL of Wayne Hills file that I got from Wayne Hill. He then made Himself and Mack Arnold a copy. I have since talked to Scott and He told me again that YES Mack got a copy. I also know this because, Mack and I talked about it. SO, He also knew "WHO" to contact to prove that We were in a relationship. Scott Bellshaw (713) 227-6667. They could of but, did not find my wittnesses or try to prove that this was the case. I also want to take the stand to show the Jury this and they Closed before I could.

The States only Wittness against me,Tamra Llamas stated on the stand that I told Her that Michelle SCRATCHED Me.Then during Trial the State showed a Vid~~eo~~ on the day of this Murder and I had on a Long Sleeve Shirt.They said I had this Shirt on because,Michelle Scratched Me.SO,I dont see where I should have to prove anything to test the other (4) PUBIC HAIRS and (1) HEAD HAIR.She had (4) Hairs under Her Nails and (1) PUBIC HAIR Cleared Me.The State and it's witness say's that My DNA is under Her Nails.So,Let me prove it is NOT. The State also told the Jury that She got the Hairs from the Shag carpet.Well,She did NOT have any CARPET FIBERS under Her Nails. Michelle had a CAT that lived in Her House and She did not have any Cat Hairs or anything else,under Her nails or on Her.

You know Your Honor,I keep seeing people getting Convicted and Cleared from the DNA under finger nails and Ya'll act like the DNA in my case is NOTHING.I dont understand this.

Det.Rossie stated on the stand that He thought that Sex could of taken place 1st in Her Bed and then moved in to the living room. They found (2) DARK BROWN/BLACK PUBIC HAIRS in Her Bed.They found NO OTHER Hair in Her Bed.She had Light Brown Hair. The Husband said that He had not been in the House since 1st week in December.(6) weeks before she was Killed. The sheets had too of been changed since He left or there would of been some of Her Hair found in the Bed and or on the pillow.There was NONE.also,NONE of His. Again,I should Not have to prove anything to test the Hairs found in Her bed.Because,the states wittness said that He thought Sex took place in the Bed.Let Me Prove it is Not Mine. When My WRIT Attorney was trying to get some of the DNA Tested He hired a DNA Expert and She found another SEMEN.I was told this by Jim Leitner.My WRIT Attorney.I nor the Jury knew this.SO,sex could of happend in that Bed.We dont know!

I also think that I should be able to test ALL of the DNA that was found at this crime scine and also have a DNA Expert look at the Prints that have allready Cleared ME.

ON June 25,2003 I filed a ProSe Motion in your courtroom.On July 8, 2003 You GRANTED this Motion.The Motion was to have GREGORY GLEN MARKWARD'S DNA Tested to the DNA found at 100 Block of Doverfield and against ALL of the DNA that the state was useing against me. This was NEVER DONE.(SEE MOTION)The HCSO LINKED this Murder to the the one at the 100 blk of West Doverfield.This is the one that I'm charged to.They are very close in style.Michelle was stabled 17 times and had Her throat Cut. Mrs.Odem was stabled 16 times and had Her throat cut . It happend 17 Days appart and 13 miles away from each other.This is too close to over look.

Your Honor ,it is very disturbing to read the Paper and see that you are the Judge overseeing the DNA Testing in the HPD DNA Crime Lab Scandle -DNA RETESTING and I'm in YOUR COURTROOM and Cant get My DNA Tested.

I have Numerous items of DNA that will clear me if you will let me test them.

I am willing to let you take 10% of my commissary a month "IF" the DNA does NOT CLEAR ME. If it does CLEAR Me. NO COST TO ME.

Your Honor, I hope that you will Appoint me a Attorney and let me Test ALL of the DNA to PROVE that I did NOT comit this crime.

C.C INNOCENCE PROJECT
BERRY SCHECK.
INNOCENCE NETWORK
DAVID DOW .

ATT. BOB WICOFF.
ATT. JIM LEITNER.
A/C PRESS
DEE MARTIN.

HOU CHRONICLE
ROMA KHANNA.
ROSANNA RUIZ.
CLAY ROBISON
RAD SALLEE

HOU PRESS
GEORGE FLYNN

KIRV FOX 26
RANDY WALLACE
HARRIS CO. DIST CLERK.
DALLAS MORNING NEWS
KEVEN ANN WILLEY.
DIANE JENNINGS.
ATT. DICK DEGUERIN

RESPECTFULLY

William D. Irvan
WILLIAM D. IRVAN.

June 3, 2013

Judge Hughes.

I was Not appointed a DNA Attorney for 3 Year's and 17 Month's. March 7, 2006 UNTIL August 18, 2009. (See 4:11-mc-00293 Docket 33, Letter from DNA Attorney Thomas A. Martin.) It is very clear from this letter I am NOT the one stalling. They "The State" left me with out Counsel.

William D. Irvan

V.

Case # 4:12-cv-01683

RICK THALER

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

CLERK OF COURT

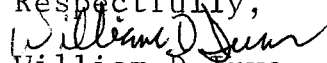
JUN 05 2013

JUNE 3, 2013

Dear Clerk of Court:

David J. Bradley, Clerk of Court

Please find enclosed a Pro Se Motion asking the Court to send me to state court to resolve my Art 64.DNA Motion and to ask the T.C.C.A to allow me to Supplement my 11:071 Habeas writ.I am asking this under Art 64, 2244 (d)(1) & 2244 (d)(2). Also enclosed is a (3) page letter to the 180th.RE DNA ATTORNEY. Thank You For Your Help In This Matter.

Respectfully,

William D. Irvan

WILLIAM IRVAN 999472
3872 FM 350 South
Livingston, Tx. 77351
Polunsky Unit

**UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS**
EN EN

JUN 05 2013

David J. Bradley, Clerk of Court

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Southern District of Texas
Houston Division
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Houston, Tx. 77002

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